

# THE ROLE OF MODERN MEANS OF COMMUNICATION IN STRENGTHENING THE PRINCIPLE OF TRANSPARENCY IN THE FIELD OF ELECTRONIC ADMINISTRATIVE CONTRACTS

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## ABSTRACT

*Public administrations are keen to keep pace with technological development by exploiting modern means of communication and employing them in their various business practices, especially in the field of concluding administrative contracts in an effort to consolidate the principle of legality. This is achieved by adapting these means to serve the principles governing the conclusion of their contracts, in particular, the principle of transparency, as these means are considered the product of progress, the technological revolution and the change of concepts and communication tools that administrations can resort to when they desire to communicate with the contracting public in order to meet their needs and maintain their sustainability. This study aimed to highlight the role of modern means of communication in achieving the greatest degree of transparency when public administrations conduct contracts. It was divided into two chapters, the first chapter entitled: the legal significance of the principle of transparency, in which the concept of transparency and its extent with regard to electronic administrative contracts was explored in two topics, the second chapter entitled the impact of using modern means of communication on the principle of transparency, in which the development of the concept of transparency in the field of electronic administrative contracts was investigated in addition to the clarification of the status of that principle in some countries such as France, Jordan and Egypt in two successive topics. It was concluded in this study that modern means of communication have a major and effective role in highlighting the value and status of the principle of transparency in the field of electronic administrative contracts.*

**Keywords:** The Principle of Transparency, Public Utility, E-Government, Advertising, Electronic Administrative Contracts, Equality between Contractors, Free Competition, Means of Communication and Modern Technology

## INTRODUCTION

### First: Introduction and the Study Importance

The world is currently witnessing successive developments in the field of technology in general, and in the field of communication systems in particular, which resulted in the emergence of what is referred to as information and communication technology. This is due to the radical change in recent years in people's lifestyle as a result of the tremendous development which modern means of communication have gone through in general, and especially with regard to the computer and the Internet. It is worth noting that the need has become urgent to establish a legal system that governs administrations' electronically concluded contracts. Therefore, most of the comparative legislations tended to develop a legal system that regulates contracting procedures, in order to reach a clear legislative environment that allows the legislator to extend his/her control over administrations contracts in their newly developed form, and to monitor the extent of their legality and consistency with the principles governing administrative contracts. Hence, the importance of this study,

as it shows the impact of the role of the modern means of communication and technology in enhancing the principle of transparency in the field of electronic administrative contracts. The uniqueness of the study is that it is the first study that deals with this topic in a specialized manner<sup>1</sup> (Al-Saghir, 2010).

## **Second: The Research Questions**

- 1) To what extent are the provisions of the Government Procurement System No. 28 of 2019 in promoting the principle of transparency are adequate- especially since the Jordanian legislator has allowed administrations to use modern means of communication when concluding their contracts?
- 2) Are modern means of communication considered a sufficient new means to enhance the principle of transparency when concluding contracts?
- 3) What are the administrations justifications for resorting to the use of modern means of communication when concluding their contracts?
- 4) What happens to contracts concluded by administrations at the present time without announcing them through the modern means of communication and technology?<sup>2</sup>

## **Third: Problem of the Study**

- 1) The absence of judicial rulings issued by the administrative judiciary in this regard.
- 2) Lack of scientific studies such as doctoral and master's theses or legal research on the subject of this study.
- 3) The scarcity of books and resources that specifically and independently address the subject of the study.

## **Fourth: Study Methodology**

In this study, a legal approach that combines the analytical and the comparative descriptive method was followed which relied on the legal texts that are characterized by regency due to their recent issue by the French, Egyptian and Jordanian legislators, which necessitates dividing them into two chapters, as follows (Tokhi, 2014)<sup>3</sup>:

**The First Chapter:** the legal meaning of the principle of transparency.

**The Second Chapter:** the effect of using modern means of communication on the principle of transparency.

### **The First chapter: The Legal Meaning of the Principle of Transparency**

The Jordanian legislator has ensured the mechanisms by which public money is protected in the field of administrative contracts in all its forms, whether in the field of public works contracts or other types of contracts concluded by government agencies that aspire to maintain the functioning of public utilities within the state, regularly, steadily, on an ongoing basis , and in a way that ensures the promotion of the principle of free competition under the umbrella of transparency in the presence of specific rules and mechanisms. This prompted the Jordanian legislator to enact a unified system that regulates government contracting operations as a guide and legal reference for all state departments and institutions, which is found in most modern legislations such as the Egyptian and the French. Furthermore The principle of transparency<sup>4</sup> is one of the most important principles governing the conclusion of administrative contracts<sup>4</sup> (Amin, 1992).

### **First Topic: Definition of Transparency**

The term transparency is one of the newly emerging terms in the field of administrative law in general and in the field of administrative contracts in particular.

Moreover, it is one of the modern terms used by the official anti-corruption bodies in the world. It refers to the need to inform the public about the public policies and how the state is managed by those in charge from Heads of state, governments, ministers and all those concerned in state institutions in order to reduce unannounced policies that are characterized by ambiguity and the lack of public participation in them, which negatively affect the conclusion of administrative contracts and their exposure to administrative and financial corruption in a way that weakens this process as a tool used by the state and its administration to support the wheel of national economy<sup>5</sup> (Ahmed, 2009).

### **The Concept of Transparency Linguistically**

Transparency linguistically means: the ability of an object to show what is behind it, therefore, it is said about a person who shows what is concealed within him/her: a transparent person. A thin garment is said to be a transparent garment meaning thin. Therefore transparency means the ability to see the things that are concealed, and to know their reality. It is said that transparency is the object's ability to show what is behind it and can be used to refer to the person who shows what is concealed and thus is called a transparent person. Transparency linguistically means the transparent object that does not obscure what is behind it, that it is so thin that what is behind it can be seen, i.e. clarity and it is the opposite of opacity and secrecy<sup>6</sup> (Skiker, 2009).

### **The Concept of Transparency as a Term**

Doctrine and jurisprudence have not identified a specific concept of transparency. The concept of transparency as a term varies based on the fields in which it is used, and this is due to the multiplicity and diversity of areas of life for individuals and groups on the one hand, and for government administration on the other hand, especially in the areas of administrative contracts. It is found that the concept of transparency is present in the political scene at times and in the administration field at other times (Basit, 2012).

Transparency means, according to some doctrines: "the flow of information, its abundance, and its public circulation through all media means, which facilitates the awareness of any phenomenon". Others have defined it as: "The protective and guarantor fence to reduce the suspicion of bid rigging that aims to benefit some at the expense of others. Another part of jurisprudence defined it as: "One of the modern terms used by the bodies concerned with combating corruption in the world, which express the need to inform the public about public policies and how the state is managed by those in charge, including heads of state, governments, ministers and all those concerned in state institutions, in order to reduce the unannounced policies that are characterized by ambiguity and the lack of public participation in them clearly. Transparency means the clarity of legislation, being easily understandable, its stability, its consistency, its objectivity, its clear language, its flexibility and its development in accordance with the economic and social changes as well as with the spirit of the age.<sup>1</sup> Others defined it as: "For the government and public administrative bodies to be in a box of glass, so that everyone can see the work they do, the tasks they undertake, the programs they manage the relationships they have, and the way in which this is practiced. It also includes adherence to public service ethics and systems of national integrity and avoidance of abuse of power. On the other hand, some doctrines view transparency as: "a general principle that must be emphasized in the constitution and the laws regulating various aspects of life. This principle is based on clarity, the availability of information and the publicity that is required by the administration, whether this administration is profit-oriented or not, and whether it is a private or public administration so that it is easier for workers at lower levels and the public dealing with this administration to obtain sufficient information about decisions and projects decided by this authority at the lowest cost and with the least

effort, provided that there will be penalties in case of violation of these procedures”<sup>3</sup> (Basit, 2019).

From our point of view, we believe that it is possible to define transparency as: “a general principle that is necessary and imperative which is based on openness, clarity and the availability of all information related to the activities of public entities to the contracting public or workers within them with the aim of achieving free competition to reach the best standard in the interest of the facility. In addition to that its absence causes the invalidity of the procedure or activity (Al-Subai'I, 2015).

## **Second Topic: Transparency in the Field of Administrative Contracts**

Transparency has a fertile ground in the field of administrative contracts, as government agencies and departments strive, when concluding their administrative contracts, to complete this process in a smooth, easy and clear manner without any suspicion or corruption. It has become a standing practice for government departments in the management of their public facilities, especially in the field of public contracts, in order to achieve free and fair competition among the contracting public. Some doctrines view that the principle of transparency is linked to common denominators with all procedures related to the conduct of the contracting process from its beginning to its last stages, such as announcing the tender or auction, as pursuing transparency in the field of administrative contracts, along with other contracting procedures, contributes to the progress of the process in accordance with the provisions of the law.<sup>3</sup> Government departments and institutions often announce their desire to contract with the public in a way that ensures that this announcement addresses all target groups and those who are invited to conclude a contract with them according to the required conditions and specifications. In this case, the role of transparency in the field of administrative contracts is evident, which is represented in inviting everyone who is capable and meets the chapters necessary to implement the contracting process.<sup>4</sup> It should be noted here that transparency and the announcement of the administration’s desire to contract with the public does not mean the absence of the authority and control of the administration and its right to exclude the participants in the bid if it is found that they are not suitable, incompetent or there is any reason that would affect the conduct of the contractual process due to the participant in the contract<sup>5</sup> (Al Kubaisi, 2008).

## **The Concept of Transparency in the Field of Administrative Contracts**

Jordanian legislation in particular or comparative legislation in general, did not define a specific concept of the principle of transparency in the field of administrative contracts. Rather, this task was assigned to doctrine and jurisprudence. Perhaps the purpose was to give a wide discretion to the jurisprudence or the administration to disclose what contradicts the principle of transparency or any matter that would affect the process of contracting or compromises the basic motive of the contracting process represented in achieving the public interest while ensuring the continuity of the functioning of public utilities regularly and steadily. It is worth noting that the definitions of most of the various concepts related to administrative law was assigned by the legislator to the doctrine and jurisprudence, because these concepts are subject to continuous change or the need to consider public interest when defining a concept for each case separately. Some doctrines have defined transparency as: “The system that enables bidders, suppliers, or even other stakeholders to confirm that the process of selecting a contractor with a government agency has taken place through clear and abstract means”<sup>6</sup> (Al Ramadan, 2016).

Moreover, some defined it as: “The system that is characterized by clear rules and tools which allow the verification of their implementation. These verification tools are available to auditors from the Audit Court, and the interested parties such as the losing bidder

who wants to know the reasons for not accepting his/her offer or why he /she did not win the contract"<sup>7</sup> (Mohammed, 2014).

While, others defined it as: "The administration's commitment to carry out the duties imposed by law and its commitment to publicity, clarity, impartiality, non-discrimination, and making information related to the administrative contract available to all candidates"<sup>8</sup>.

We view with regard to the definition of the concept of transparency in the field of administrative contracts it is: "All the procedures that bind the administration when concluding its contracts, whether they are procedures or means that the administration resorts to in order to complete the contracting process and which would reassure the contracting public, achieve the highest levels of equality and publicity among them, and the violation of which results in invalidity. While the administration keeps its right to exclude any of its contractors for the considerations presented by the administration, provided that it complies with the provisions of the law." It is worth mentioning that the principle of transparency has gained popularity in most comparative legislations, as the Jordanian legislator emphasized it when issuing the new government procurement system, which was in line with the approach taken by the French and Egyptian legislators<sup>9</sup> (Al Sayed, 2009).

We believe that the principle of transparency is the legal basis and protector of the freedom of competition, however, this freedom is not absolute, as it has two restrictions: The first restriction: the conditions imposed by the administration related to the person with whom a contract is concluded.

### **The Second Restriction: The Procedures Imposed by the Administration, such as Excluding the Bidder who is proven to be Technically or Financially Unsuitable**

It is noticeable based on these restrictions that the administration is constantly concerned that the contractor has the technical competencies and financial ability. When the contractor is technically and financially capable, administrations tends to contract with him/her for considerations of public interest and achieving the greatest benefit from the contracting process in order to maintain the running of the public facilities regularly and steadily. Thus, ensuring that the administration will spend the public funds allocated to these projects rationally, away from suspicion, so that the administration remains free from any circumstance that may affect the contracting process or question the impartiality or integrity of the members of the committees. This will reflect positively on enhancing the confidence of the public in the administration and in the actions taken in connection with the contracts concluded (Tarawneh et al., 2010).

### **First: The Extent of Transparency in the Field of Administrative Contracts**

By exploring the principle of transparency as one of the principles governing the conclusion of administrative contracts, the extent of the implementation of this principle must be identified, as the availability of this principle constitutes the most important pillar in the conduct of the contractual process because Its application is not limited to one stage alone, rather it must be present throughout the contracting stages from the beginning to the end.<sup>10</sup> It is recognized in doctrine and jurisprudence that the restrictions on the freedom of management in contracting differ according to the stage of the process. The rules that govern the stage of announcement (conclusion) differ from those in the stage of contract implementation, as the role of those rules and procedures lies in legitimizing all administration work. As such, we will address the extent of implementing the principle of transparency in two sub-sections, as follows:

### **The Extent of Transparency at the Stage of Concluding the Administrative Contract**

The administration bears the greatest burden in the implementation of the principle of transparency - especially - at the stage of concluding the administrative contract. It is not permissible for the administration to abandon its role at any stage, because it is obligated throughout those stages to investigate transparency in every small or big part. When the administration announces its desire to contract, the public begins to take any path regardless of its nature, in order to make that deal. From our point of view, we believe that the administration at this stage should follow all the ways and means that would enhance the principle of transparency at the stage of conclusion and to distance itself from any circumstance that might raise doubts or suspicions regarding the conclusion of its contracts. Among the duties of the administration in this regard are the following (Jawad et al., 2007):

- 1) Announcing bids (tenders or auctions) in a public way that is available to all, and in a manner that ensures that all concerned and interested people are addressed using all modern electronic means of communication.<sup>11</sup>
- 2) Disclosing all legal and financial aspects related to the announced bid and all other details in a manner that ensures that the contractor is informed of all difficulties. Also to set the necessary future plans to ensure that contractor is informed of everything related to the contract electronically.<sup>12</sup>
- 3) Announcing all the procedures that the contractor will go through, and informing him/her of all the terms of the contract and the required implementation guarantees electronically.
- 4) Adopting the most widespread and easiest means to reach the contracting public when the administration expresses its desire to contract with the public.
- 5) Ensuring accuracy and credibility when publishing the specifications and conditions of bids electronically.
- 6) Allowing all those who meet the financial and technical competence condition to participate in the bid without discrimination for any reason whatsoever electronically.

### **The Extent of Transparency in the Implementation Phase of the Administrative Contract**

The importance of applying the principle of transparency at this stage is no less than at the previous stage, rather its importance increases significantly in the implementation stage, as it is a fertile ground for the spread of corruption, both financial and administrative. The importance of ensuring transparency at this stage is represented in maintaining many considerations and pillars, such as executing the bid in an elaborate and high quality manner in accordance with the conditions of the bid, and committing to the volume of achievement in a way that preserves public money and not waste it on unjustified change orders or based on non-actual needs. , which The state treasury incurs additional sums of money invoking these orders in order to obtain additional sums, most of which go in the form of bribes or false commissions to committee members or employees related to those bids, because such practices incur the state treasury additional sums of money justified by these orders in order to obtain additional sums, most of which are spent as bribes or false commissions to members of the committees or employees associated with those bids (Shabir, 2017).

The manifestations of transparency in the implementation stage of the administrative contract are as follow:

- 1) The administration supervision and control over the implementation of the contract, while having its right to amend its terms, avoid it or terminate it guaranteed in accordance with the chapters of the public interest.
- 2) Activating contractual sanctions and informing the contractor of their content at the stage of conclusion and applying them continuously in the event of any breach by him/her.
- 3) Not to disregard any violation committed by the contractor nor to conspire with him/her under any circumstance.

- 4) Ensuring the contractor's commitment to the administration with regard to delivery times and within the announced and agreed specifications.
- 5) Ensuring that the contractor implements his/her obligations and all the terms and conditions of the contract, especially in contracts in which the contracting person or his/her capacity is taken into account, and that the contractor does not shift these obligations to another contractor, regardless of his/her capacity, such as being a sub-contractor without taking prior approval of the administration, under contractual sanction such as a fine or termination..etc.

From our point of view, we believe that the principle of transparency has a more fertile ground in the stage of concluding the contract than in the implementation stage, as the administration's pursuit to ensure the greatest degree of transparency at the conclusion stage has a positive impact on the contracting public, because these procedures create an atmosphere of confidence and reassurance, and at the same time, they open the way for many competent and specialized parties to contract with them.

## **The Second Chapter**

The impact of the use of modern means of communication on the principle of transparency under electronic administrative contracts

### **Preface and Division**

The development of Information and Communication Technology (ICT) sector and the emergence of the Internet have contributed to a significant change in public sector operations. It is practically well established that the introduction of ICT will inevitably revolutionize the administration business, as the use of these techniques may result in a change in the administration style and increase its effectiveness and performance.<sup>13</sup>

Since the use of modern means of communication and technology is a manifestation of administrative reform and the development of public sector operations, governments have not been immune from the shift from the traditional to the modern method of administration in the management of the public facility in general; and in the field of administrative contracts in particular, which in turn solves the problem of the far of state administrations, bodies and councils from the capital, where its organs are often located, thereby breaking the geographical dimension.<sup>14</sup>

It should be noted that the general theory of administrative contracts was not immune to the technological storm that dominated all forms of administrative activity, which soon hit the main nerve of those contracts by influencing the governing principles of its conclusion. So, we can say that these principles have become in a new form, and this is what we will address in this chapter through the following division:

Section 1: The evolution of the concept of transparency under electronic administrative contracts

Section 2: The principle of transparency under electronic administrative contracts in some comparative legislation

### **Section 1**

#### **The Evolution of the Concept of Transparency under Electronic Administrative Contracts**

It is the responsibility of the Administration to respect the principle of legitimacy during the exercise of its work, particularly in concluding its administrative contracts, whether traditionally or electronically. Because consideration shall be given to the work of the Administration, which has come into being, regardless of the template in which it came

out or the modern means used to conclude such conduct. Therefore, administration's use of electronic means to conclude its administrative contracts means that such conduct is inevitably subject to the principle of legitimacy and the survival of the principles governing and restricting such contracts.<sup>15</sup>

It is recognized that the Administration is not equal with individuals in the freedom of expression of its will when it wishes to contract. This is due to the obligation of the administration authority to conclude the contracts with procedures and conditions drawn up and specified by the legislator. The administration's announcement of its desire to contract with the public in the form of tenders or bids, is not more than an invitation to contract, and the contract is held only if the administration accepts the submitted tender.<sup>16</sup> Therefore, we cannot fold electronic means at the heart of the administration's work, especially on the area of administrative contracts without considering the governing principles of their conclusion<sup>17</sup>. From our point of view, the use of electronic means in the field of administrative contracts has led to the emergence of new, developed concepts such as the concept of electronic administration contract, electronic offer and acceptance, e-mail and other names that have replaced the old terms. This is an inevitable product of the development and pursuit of the administrations to keep pace with the technological revolution. Hence, we also believe that the concept of transparency within the scope of electronic means is the same concept as accepted under traditional administrative contracts, noting the different modern means of communication used in establishing it. So, we can develop a new definition of the principle of transparency in light of the revolution that is ravaging the administrative contracting sector as: "A general principle necessary and imperative to exist which is based on publicity, clarity and making all information related to the activities of public entities available to the public contractors' audience or employees to achieve free competitiveness in order to reach the best standard in the interest of the public facility and its absence is linked to the nullity of the procedure or activity, by inviting as many of the contractors' audience as possible through the use of modern communication and technology means.

## Section 2

### **The Principle of Transparency under Electronic Administration Contracts in some Comparative Legislation**

The use of electronic and modern means of communication in the field of electronic administration contracts will enhance the principle of transparency. So that the administration can invite as many of the public as possible to contract with them because of the speed and ease of spreading in a record time and with which geographical boundaries melt; especially, when inviting foreign companies or individuals in contracts requiring the invitation of participants of different nationalities. Most comparative legislation went to introduce electronic advertising of its desire to contract with the audience.<sup>18</sup> To demonstrate the impact and role of the use of modern means of communication in promoting the principle of transparency under electronic administration contracts, we will give some examples of legal applications in some countries as follows:

#### **The Situation of the French legislator**

In keeping of the French legislature with administrative contracts, and what the revolution and the development of modern means of communication have achieved, Decree No. 2002/692 of April 30, 2002, issued by reference to article no. 56 of the French Administrative Contracts Act, has indicated that administrative contracts could be concluded by electronic means. Decree No. 846/2001, issued on September 18, 2001, on the regulation of electronic auctions procedures, was also issued, and through these decrees we find that the



French legislator has allowed the administration the freedom to use electronic means in concluding administrative contracts, in addition to allowing auctions and tenders to be conducted through electronic means. The French legislator has launched the administration's hand.<sup>19</sup> Upon the issuance of the current law on public contracts no. 1075 of 2018, the legislator organized the electronic auction in Article 2125-1.<sup>20</sup>

The French legislator defined the electronic auction in Article 1 of Decree no. 846-2001 as: "These procedures under which the candidate submits the administrative contract at a bid, through an electronic intermediary, and within a certain period of time determined by the public person and informed in advance all candidates".<sup>21</sup>

### **The Situation of the Jordanian Legislator**

The Jordanian legislator's interest started to appear through the adoption of the Electronic Transactions Law No. 15 of 2015 in its permanent capacity, after many years of adaption as a temporary law. The phase of adaption this law as a permanent law is the main turning point in the electronic transformation of the administration's business, and the aforementioned Electronic Transactions law has been unveiled by the Jordanian legislator, who recently unveiled the new government procurement system<sup>23</sup>, the government's electronic procurement system and the electronic strategic inventory management system.<sup>22</sup> The legislator has specified a specific route to be taken by the administration through the method of tendering, in cases of contracting for the purchase of works, technical services, consulting and supplies.<sup>25</sup> The new system defined electronic tendering as: "tender carried out by means through the Jordanian electronic procurement system".<sup>26</sup> This system also authorized the use of the reverse auction method to carry out procurement procedures and complete any methods of purchase, in addition to the use of electronic reverse auction.

According to the researcher, the Jordanian legislator has authorized the administration to announce its contracts by electronic means and authorized its contractors to submit their offers also by electronic means, but the predominant nature of the legislator's desire to authorize such means of advertising, or to make offers, is timid. Thus, we find that the legislator mentions the authorization of electronic means in these materials for example, without any obligation, i.e., giving them permissions. The Jordanian legislator has registered a new step in this area when he approved the instructions to regulate the use of the unified electronic procurement system No. 1 for 2018. This system states that: "The electronic purchasing process is carried out in accordance with the procurement methods specified in the above-mentioned supplies system, and in accordance with the procedures specified by the instructions issued under it, and in accordance with the conditions and specifications, through the use of this system". The Jordanian legislator has taken into consideration the need to inform the winners of the tenders through the bulletin board, or by electronic means. It is clear that the administration here is obliged to express its acceptance expressly, either by announcing it on the bulletin board for this purpose, or through electronic means. Jordanian legislator allows the Administration, in the event of an objection by the opponents to the results of the bidding committee, to inform the objectors with decisions issued by the Objection Committee by electronic means. From our point of view, we consider that the position of the Jordanian legislator in this regard is clear from what was stipulated in the new government procurement system when it authorized tender participants to use electronic means to file their complaints to the procurement committees.

### **The Situation of Egyptian Legislator**

The Egyptian legislator identified the main cases that the administration may resort to when concluding its contracts, through public tendering when contracting to purchase or lease transfers or real estate, contracting business contracts or receiving services or technical

works, and by public bidding when contracting to sell or lease transfers, real estate or projects that have no legal personality, and licensing the use or exploitation of real estate or tourism projects and canteens. The Egyptian legislator has approached the approach of the French legislator to allow the administration to use electronic means in the field of contracts. We find that the Egyptian legislator directed the administrative units in the state, to publish the results of financial, technical and awarding offers for tenders on the relevant websites. Moreover, prime minister's decision on electronic publishing in relation to tenders and government bids in all government agencies has been issued as of 1/1/2010.

The administration in the Arab Republic of Egypt also used electronic means in publishing tenders and auctions, whether in announcing them or their results, in order to reduce the costs of publishing and announcing tenders, auctions and practices. The position of the Egyptian legislator was clear and obvious, as the legislator allowed the administration to use electronic means when resorting to bidding, through the text of article 83, which includes how to announce the decisions of the award and inform the applicants of the results of that committee. We can conclude that most of the comparative legislations were intended to introduce modern means of communication into public administration contracting processes to promote the principle of transparency and to trigger its application as one of the governing principles for concluding administrative contracts due to their ability to achieve that principle at all stages of the contract. Which will reflect positively on the contractors' confidence in the administration and thus the integrity of the entire contractual process.

## CONCLUSION

Government administrations always seek to keep pace with technological development and introduce modern means of communication in all their activities. This development leads to the strengthening and consolidation of the principle of legitimacy that accompanies the work of the various administrations and maintains the governing principles of concluding electronic administrative contracts, particularly the principle of transparency in such a way that ensures that administration customers and those who wish to contract with them are declared and informed using the most common means that achieve free competitiveness, i.e. these means have a very positive impact in achieving enough transparency in the field of Administrative contracts in particular and electronic contracts in particular. Therefore, we conclude this research in listing our most important findings through the study as follows:

### First: Findings

- 1) The principle of transparency is one of the most important governing principles for concluding administrative contracts of any kind, because it is the safety valve of free and fair competitiveness, which leads to the best expenditure of public money.
- 2) Keeping pace with technological development and authorizing the use of electronic means have become an urgent necessity at a time when geographical boundaries are beginning to fade, and the virtual world replaces the tangible physical world.
- 3) The administration's use of various modern electronic means and communications in the practice of its work and activities, especially in the field of concluding administrative contracts, is a realistic reflection and interpretation of the flexibility of administrative law rules and its continued ability to develop and change.
- 4) The administration's use of various modern electronic means and communications in the practice of its business and activities, especially in the field of concluding administrative contracts, promotes the principle of transparency and enshrines free competitiveness by ensuring that all categories of the public are invited by sending invitations or publishing tenders announcements through websites or e-mail which are specifically designed for this purpose, and not limiting them to certain people alone.

- 5) Emphasizing the need for administration to investigate transparency when concluding its contracts is a practical interpretation of the principle of legitimacy, which electronic means promote due to the impartiality and generality of these means. Therefore, all groups addressed by the administration can see all terms of tenders and obtain the specifications booklet and applications for participation, including access to the decisions of the committees of awarding and resolving.

## Second: Recommendations

- 1) Prohibiting contracts concluded by public administration authorities on the government contracts and procurement portals specified by the public administration and not receiving any request or transaction related to those contracts except through the electronic means prepared for it, under the penalty of nullity of the contract announced without electronic means.
- 2) Make all information, documents and papers related to tenders available on the government procurement portal, and in a manner that does not conflict with the principle of confidentiality in contracts whose nature requires it.
- 3) Speeding up the granting of the necessary licenses and simplifying the procedures before electronic documentation centers, because they have an active role in completing the contracting process, as it is not possible that the electronic administration contract system will be completed without those centers.
- 4) The adoption of electronic payment methods from paying for the booklet of conditions and specifications through the payment of insurance ending with the payment of the administration to the financial compensation of the contract for the account of the contractor.
- 5) The need to establish a unified electronic communication center, which will be based on the Directorate of Government Tenders or Unified Procurement, which specializes in publishing and announcing tenders of all kinds, including the terms and details related to them through the portal.
- 6) Emphasizing the need to publish tenders and advertisements related to them in more than one language, especially in those widely used languages on the website of the Unified Procurement Service.
- 7) Establishing a unified center equipped with all modern technologies and means of communication whose task is to broadcast the opening sessions of envelopes and the decisions of awarding and resolving committees through the website dedicated to it.
- 8) Sending committee convening dates electronically to all tenders' participants via e-mail in advance and making all means and techniques of remote communication available.
- 9) Training employees and workers in all government departments related to public contracts and bringing together contractors to use modern communication and technology continuously by engaging them in educational and development courses in this field to ensure access to the required electronic services.

## FOOTNOTES

- 1) The new unified Jordanian Government Procurement Law No. 28 of 2019 published in the Official Gazette, on 1/5/2019, Issue No. 5572.
- 2) The idea of issuing a new public contracting law in France began in 2016, specifically with the issuance of the December 9, 2016 law on transparency and combating administrative corruption.
  - Art 14 of Ordinance No. 2015-899 of 23 July 2015 relating to public contracts "Communications and information exchanges carried out in application of this ordinance are carried out by electronic means, in accordance with the terms and subject to the exceptions provided for by regulation.
- 3) For public defense or security contracts, communications and information exchange can be carried out electronically.
- 4) The Egyptian legislator also took the French legislator's approach in establishing specific rules and mechanisms for the process of government contracting through the Tenders and Auctions Law No. 89 of 1998, and what was recently approved under Law No. 128 of 2019 that regulate contracts concluded by public authorities and the executive regulations.
- 5) Dictionary of Contemporary Arabic Language (Al-Lugh Al-Mu'asira), available on the Internet, via the following electronic link: ([http: www. Maajim. Com](http://www.Maajim.Com))
- 6) Dr. Sami Al-Toukhi, The Legal System of Government Under the Sun, Transparency in the Management of Public Affairs - The Way for Development and Administrative Reform, a comparative study, Dar Al-Nahda Al-Arabiya, Cairo, 2014 , p. 309 and beyond.

- 7) Counselor, Dr. Muhammad Ali Skeiker, Encyclopedia of Tenders and Auctions regarding Governmental Entities and Business Sector Companies in Egypt and Arab Countries, third edition, 2009, p.15
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- 11) Counselor, Dr. Muhammad Ali Skeiker, Encyclopedia of Tenders and Auctions regarding Governmental Entities and Business Sector Companies in Egypt and the Arab Countries, previous reference, p. 15.
- 12) Dr. Muhammad Fouad Abdel Baset, Legal Administrative Business, Administrative Contract, chapter 2, previous reference, p. 198 and beyond.
- 13) Dr. Hassan Abdel Rahim Al-Sayed, Transparency in the rules and procedures of government contracting in the State of Qatar - a comparative study with the UNCITRAL Model Government Procurement Law - published research, Sharia and Law Journal, Issue 39, 2009 , p. 57.
- 14) Dr. Hassan Abdel Rahim Al-Sayed, previous reference, p. 58.
- 15) Dr. Majed Shehab Al-Ramadan, The Commitment of the contracting Parties to Transparency in the Field of Administrative Contracts, previous reference, p.99  
Article 85/A of the Jordanian Government Procurement Law, referred to earlier, stipulates the following: "Framework agreements are established in accordance with the principles and procedures referred to in this system and the instructions issued thereunder for all stages until the conclusion of contracts, including the principles of transparency, competition, the procedures for requesting participation in the submission of bids from tenders, evaluation of tenderers' qualifications and procurement methods. Article 6 of the new Egyptian Law Regulating Contracts Concluded by Public Entities, previously referred states the following: "All contracting methods and procedures stipulated in this law are subject to the principles of transparency, freedom of competition, equality, and equal opportunities." It was also stipulated in Article 3 of the French Law No. 1075 of 2018 on public contracts, the following: "The administrative authority requesting to receive the service or commodity must respect the principle of equality in dealing with all bidders, and respect the principle of transparency. "
- 16) Revise the text in French: "The administrative authority requesting to receive the service or commodity must respect the principle of equality in dealing with all bidders, and respect the principle of transparency."
- 17) The text in French: -  
-Art 3 of the public procurement code Buyers and licensing authorities respect the principle of equal treatment of candidates for the award of a public procurement contract. They implement the principles of freedom of access and transparency of procedures, under the conditions defined in this code.
- 18) These principles ensure the efficiency of public procurement and the proper use of public funds.
- 19) Dr. Majed Shihab Al-Ramadan, The Commitment of the contracting Parties to Transparency in the Field of Administrative Contracts, previous reference, p. 107 and beyond.
- 20) Dr. Muhammad Fouad Abdel Basset, Legal Administrative business, Administrative Contract, chapter 2, previous reference, p. 386.
- 21) The authority of the administration to impose penalties on the contractor is not absolute, but rather it is restricted and subject to the supervision of the administrative judicial and is controlled by two aspects, the first aspect: the penalty is based on a valid and justified reason, and the second aspect: the compatibility of the penalty and its proportionality with the contractor's breach of his / her obligations. For more details in this regard, see: D. Muhammad Fouad Abdel Basset, Legal Administrative Business, Administrative Contract, Chapter 2, previous reference, pg. 448 and 449.
- 22) Kaltham Mohammed Al Kubaisi, Chapters for the application of e-management at the E-Government Information Systems Center in Qatar, Master's Thesis, Business School, Virtual University International, Britain, 2008, p. 7.
- 23) Shawki Naji Jawad, Mohammed Khair Salim Abu Zeid, Future Dimensions of E-Government at the University of Jordan: Chapters for Success, Research published in the Journal of the University of Jordan, School of Business Administration, Volume 3, Issue 3 , 2007, p. 278.
- 24) Dr. Mohammed Suleiman Nayef Shabir, Legal System of E-Mail, Published Research, Al-Azhar University Magazine, Gaza, Volume 19, Issue of the Conference of the Faculty of Law Arbitrator, 2017, p. 461.

- 25) Dr. Suhaib Ahmed Al-Manasir, Towards Legal Regulation of Electronic Management Contracts, Comparative Study, Doctoral Letter, Faculty of Law, Ain Shams University, Cairo, 2019, p. 481.
- 26) Dr. Mohammed Suleiman Nayef Shabir, Legal E-Mail System, op. cit., p. 461.  
An example of some of the legislation adopted in this direction is the Jordanian legislator in its provisions in Jordan's new unified government procurement system No. 28 of 2019, as indicated earlier, as well as what it passed through the instructions to regulate the use of the electronic procurement system, No. 1 of 2018 issued under Article 5 / C duplicate of the Supplies System No. 32 of 1993. Also the Egyptian legislator took this direction through the provisions of the Law on the Regulation of Contracts Concluded by the public authorities No. 182 for 2018, published in the Official Newspaper on October 3, in issue no. 39 and its executive regulations, and the Decision of the Prime Minister No. 463 of 2012, issued on 28-4-2012, regarding the electronic publication of the results of the technical and financial decision of tenders, auctions and practices of all kinds in government agencies on the website of the Government Procurement Portal on the following website :-([www.etenders.gove.eg](http://www.etenders.gove.eg))
- 27) In this regard see "Geez" in administrative law, Part IV, p. 69, and Lubadir in Administrative Contracts, Part I, p. 317, referred to by our professor, Dr. Mohammed Saeed Amin, a brief study of the idea of administrative contracts - provisions of their conclusion, University House of Culture, Cairo, 1992, p. 238.
- 28) Art 2125-1 of the public order code "The buyer may, in compliance with the rules applicable to the procedures defined in this title, use purchasing techniques to pre-select economic operators likely to meet its needs or allow the presentation of offers or their selection, according to specific terms.
- 29) The purchasing techniques are as follows:
- 30) 4 ° The dynamic purchasing system, which makes it possible to pre-select one or more economic operators, for purchases in common use, according to an open and fully electronic process;
- 31) 5 ° The electronic catalog, which allows the presentation of offers or one of their elements electronically and in structured form.
- 32) 6 ° Electronic auctions, the purpose of which is to select by electronic means, for a supply contract for an amount equal to or greater than the thresholds of the formalized procedure, offers by allowing candidates to revise their prices downwards or to change the value of certain other quantifiable elements of their offers.
- 33) Prof. Rahima Al-Saghir Helped Namdili, Electronic Management Contract, Comparative Analytical Study, First Edition, New University House, Alexandria, 2010, p. 202, Dr. Hisham Abdul Sayed Safi Mohammed, Legal System for Electronic Management Contracts, op. cit., p. 208.
- 34) Jordan's new government procurement system, previously referred to, instructions for the use of the electronic system for the management and control of government inventory, issued in the issue of Official Gazette No. 5444 of February 16, 2017 on page 1161.
- 35) see the text of Article 26 and Article 51 / A of Jordan's new government procurement system, referred to earlier.
- 36) See the text of Article 2 of Jordan's new government procurement system, referred to earlier.
- 37) Article 27 of Jordan's new government procurement system, previously referred to, states the following:
- A. The Procurement Committee has the right to use the reverse auction method to carry out procurement procedures or to complete any of the procurement methods contained in this system, including the referral of tenders under framework agreements or any method of procurement, provided that the evaluation criteria shall be specified in the procurement documents and they shall also be measurable.
- B. "It is determined by instructions issued by the Policy Committee for this purpose how to use the reverse auction method, including an electronic reverse auction."
- 38) Framework agreements mean: "Contracts concluded through an agreement between one or more entities or government units and one or more contractors with the aim of determining the terms, conditions and supply procedures uniformly in accordance with the wording of the contract."  
- See Article no. 2 of Jordan's new government procurement system, referred to earlier.
- 39) see the text of article 63 of Jordan's new government procurement system, referred to earlier, which states: "An official website shall be established from one portal to be a major source of information on government procurement and shall be published on it advertisements for tenders, referrals, provisions of this system, instructions issued under it, directives, articles, technical guidance and other necessary information. "
- 40) Instructions to regulate the use of the electronic procurement system, No. 1 of 2018 issued under Article 5 / C duplicate of supplies system No. 32 of 1993.
- 41) See the text of Article 5 / A of the electronic procurement system, referred to earlier.
- 42) Article 61 of Jordan's new government procurement system, previously referred to, states the following:

- A. The Procurement Complaints Review Committee and the specialized technical committees that emerge from it are competent under article 90 of this system to consider the complaints of the second-stage detractors.
- 43) B- The detractors submit their complaints to the Procurement Complaints Review Committee referred to in paragraph A of this article as follows:
1. If the tenders do not accept the decision of the buyer or the procurement committee regarding the objection, he or she is entitled to file a complaint with the Procurement Complaints Review Committee within five working days of being informed of the decision of the buyer or the procurement committee.
  2. The Procurement Complaints Review Committee shall inform the buyer in writing of the complaint to stop the procurement procedure until it is decided.
- B. The Procurement Complaints Review Committee hears the complainant or his/her representative, considers the complaint submitted to it and any boosters or documents attached to it and makes its decision within a period that does not exceed twenty-one working days from the date it is received.
- C. The Procurement Complaints Review Committee obliges the buyer or the procurement
- D. committee to correct its procedures, including the re-purchase process.
- 44) E- The decision of the Procurement Complaints Committee shall be announced as soon as it is issued on the buyer's website and on the portal.
- 45) See article 7/1 of the law regulating contracts concluded by the new Egyptian public authorities, referred to earlier.
- 46) See article 7/2 of the law regulating contracts concluded by the new Egyptian public authorities, referred to earlier.
- 47) Article 83 of the New Public Authority Contract Regulation Act states: "The General Authority for Government Services shall publish this law and its executive regulations, and any amendments to them, as well as publications, periodicals and decisions concerning their application as soon as they are issued, including write-off decisions or publishing rules, re-registration and others, on the public contracts portal, in addition to the established publishing rules." Article 84 of the same law also states: "This law and its executive regulations shall be published by the General Authority for Government Services, and any amendments to it, as well as publications, periodicals and decisions relating to their application as soon as they are issued, including write-off decisions, publishing rules, re-registration, etc., on the public contracts portal, in addition to the established publishing rules."
- 48) For more information, see the decision of the Egyptian Prime Minister, No. 263 of 2014, on the electronic publication of technical decisions, financial decisions and the award of tenders, practices and bids of all kinds by government agencies, published in the Egyptian newspaper Al-Waqaea', and can also visit the government procurement portal at the following link: (<http://www-etenders.gove.eg>)
- 49) For more, see the decision of The Egyptian Prime Minister No. 33 of 2010, on the electronic publication of government tenders and tenders in various quarters, published in the Egyptian newspaper Al-Waqaea', issue 4 followed on January 5, 2010, and the decision of The Prime Minister No. 122 of 2015, published in the Official Gazette issue 3 duplicate 8 on January 2, 2016.
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